

FIRST REGULAR SESSION

# SENATE BILL NO. 398

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

1413S.02I

KRISTINA MARTIN, Secretary

## AN ACT

To repeal sections 407.812 and 407.828, RSMo, and to enact in lieu thereof two new sections relating to the motor vehicle franchise practices act.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 407.812 and 407.828, RSMo, are  
2 repealed and two new sections enacted in lieu thereof, to be  
3 known as sections 407.812 and 407.828, to read as follows:

407.812. 1. Any franchisor obtaining or renewing its  
2 license after August 28, 2010, shall be bound by the  
3 provisions of the MVFP act and shall comply with it, and no  
4 franchise agreement made, entered, modified, or renewed  
5 after August 28, 2010, shall avoid the requirements of the  
6 MVFP act, or violate its provisions, and no franchise  
7 agreement shall be performed after the date the franchisor's  
8 license is issued or renewed in such a manner that the  
9 franchisor avoids or otherwise does not conform or comply  
10 with the requirements of the MVFP act. Notwithstanding the  
11 effective date of any franchise agreement, all franchisor  
12 licenses and renewals thereof are issued subject to all  
13 provisions of the MVFP act and chapter 301 and any  
14 regulations in effect upon the date of issuance, as well as  
15 all future provisions of the MVFP act and chapter 301 and  
16 any regulations which may become effective during the term  
17 of the license.

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18           2. The provisions of the MVFP act shall apply to each  
19 franchise that a franchisor, manufacturer, importer, or  
20 distributor has with a franchisee and all agreements between  
21 a franchisee and a common entity or any person that is  
22 controlled by a franchisor.

23           **3. No franchisor, manufacturer, importer, or**  
24 **distributor licensed in this state as a franchisor at any**  
25 **time before January 1, 2023, shall allow any subsidiary or**  
26 **related entity to engage in the business of selling motor**  
27 **vehicles, as defined in section 301.010, to retail consumers**  
28 **in this state, except as permitted by the MVFP act. Each**  
29 **franchisee of such franchisor, manufacturer, importer, or**  
30 **distributor shall have standing to enforce the provisions of**  
31 **this subsection.**

32           **4. No entity controlling, controlled by, or sharing a**  
33 **common parent entity or sibling entity with a franchisor,**  
34 **manufacturer, importer, or distributor shall engage in the**  
35 **business of selling motor vehicles to retail consumers in**  
36 **this state, except as permitted by the MVFP act. Each**  
37 **franchisee of such franchisor, manufacturer, importer, or**  
38 **distributor shall have standing to enforce the provisions of**  
39 **this subsection.**

40           **5. No manufacturer, importer, or distributor not**  
41 **licensed in this state as a franchisor before January 1,**  
42 **2023, shall engage in the business of selling motor vehicles**  
43 **to retail consumers in this state, except as permitted by**  
44 **the MVFP act. Any franchisor or franchisee in this state**  
45 **shall have standing to enforce the provisions of this**  
46 **subsection.**

407.828. 1. Notwithstanding any provision in a  
2 franchise to the contrary, each franchisor shall specify in  
3 writing to each of its franchisees in this state the

4 franchisee's obligations for preparation, delivery, and  
5 warranty service on its products. The franchisor shall  
6 fairly and reasonably compensate the franchisee for  
7 preparation, delivery, and warranty service required of the  
8 franchisee by the franchisor **as set forth in this section.**

9 The franchisor shall provide the franchisee with the  
10 schedule of compensation to be paid to the franchisee for  
11 parts, labor, and service, and the time allowance for the  
12 performance of the labor and service for the franchisee's  
13 obligations for preparation, delivery, and warranty service,  
14 **which shall comply with the provisions set forth in this**  
15 **section.**

16 2. [The schedule of compensation shall include  
17 reasonable compensation for diagnostic work, as well as  
18 repair service and labor for the franchisee to meet its  
19 obligations for preparation, delivery, and warranty  
20 service. The schedule shall also include reasonable and  
21 adequate time allowances for the diagnosis and performance  
22 of preparation, delivery, and warranty service to be  
23 performed in a careful and professional manner. In the  
24 determination of what constitutes reasonable compensation  
25 for labor and service pursuant to this section, the  
26 principal factor to be given consideration shall be the  
27 prevailing wage rates being charged for similar labor and  
28 service by franchisees in the market in which the franchisee  
29 is doing business, and in no event shall the compensation of  
30 a franchisee for labor and service be less than the rates  
31 charged by the franchisee for similar labor and service to  
32 retail customers for nonwarranty labor and service, provided  
33 that such rates are reasonable. The primary factor in  
34 determining a fair and reasonable compensation for parts  
35 under this section shall be the prevailing amount charged

36 for similar parts by other same line-make franchisees in the  
37 market in which the franchisee is doing business and the  
38 fair and reasonable compensation for parts shall not be less  
39 than the amount charged by the franchisee for similar parts  
40 to retail customers for nonwarranty parts, provided that  
41 such rates are reasonable. If another same line-make  
42 franchisee is not available within the market, then the  
43 prevailing amount charged for similar parts by other  
44 franchisees in the market shall be used as the primary  
45 factor.

46 3. A franchisor shall perform all warranty  
47 obligations, including recall notices; include in written  
48 notices of franchisor recalls to new motor vehicle owners  
49 and franchisees the expected date by which necessary parts  
50 and equipment will be available to franchisees for the  
51 correction of the defects; and reasonably compensate any of  
52 the franchisees in this state for repairs required by the  
53 recall. Reasonable compensation for parts, labor, and  
54 service shall be determined under subsection 2 of this  
55 section.

56 4. No franchisor shall require a franchisee to submit  
57 a claim authorized under this section sooner than thirty  
58 days after the franchisee completes the preparation,  
59 delivery, or warranty service authorizing the claim for  
60 preparation, delivery, or warranty service. All claims made  
61 by a franchisee under this section shall be paid within  
62 thirty days after their approval. All claims shall be  
63 either approved or disapproved by the franchisor within  
64 thirty days after their receipt on a proper form generally  
65 used by the franchisor and containing the usually required  
66 information therein. Any claims not specifically  
67 disapproved in writing within thirty days after the receipt

68 of the form shall be considered to be approved and payment  
69 shall be made within fifteen days thereafter. A franchisee  
70 shall not be required to maintain defective parts for more  
71 than thirty days after submission of a claim.] **Every**  
72 **franchisor, manufacturer, distributor, wholesaler,**  
73 **distributor branch or division, factory branch or division,**  
74 **or wholesale branch or division shall properly fulfill any**  
75 **warranty agreement and adequately and fairly compensate each**  
76 **of its motor vehicle dealers for labor and parts. No**  
77 **warranty or factory compensated repairs shall be excluded**  
78 **from the requirements of this section, including recalls or**  
79 **other voluntary stop-sell repairs required by the**  
80 **manufacturer. If a manufacturer is required to issue a**  
81 **recall, franchisees shall be compensated as stated in this**  
82 **section.**

83         3. Adequate and fair compensation under subsection 2  
84 of this section requires the franchisor to pay each dealer  
85 no less than the amount the retail customer pays for the  
86 same services with regard to rate and time.

87         (1) Any time guide previously agreed to by the  
88 franchisor and the franchisee for extended warranty repairs  
89 may be used in lieu of actual time expended. In the event  
90 that a time guide has not been agreed to for warranty  
91 repairs, or said time guide does not define time for an  
92 applicable warranty repair, the franchisor's time guide  
93 shall be used, multiplied by one and one half. In no event  
94 shall such compensation fail to include full compensation  
95 for diagnostic work, as well as repair service, labor, and  
96 parts. Time allowances for the diagnosis and performance of  
97 warranty work and service shall be no less than charged to  
98 retail customers for the same work to be performed.

99           (2) Franchisors shall pay the franchisee the same  
100 effective labor rate, using the one hundred sequential  
101 repair orders chosen and submitted by the franchisee, less  
102 simple repair orders, that the franchisee receives for  
103 customer-pay repairs. This requirement includes vehicle  
104 diagnostic times for all warranty repairs. Additionally, if  
105 a technician is required to communicate with a technical  
106 assistance center, engineering, or some external source in  
107 order to provide a warranty repair, the franchisor shall pay  
108 for the time from start of communications, including hold  
109 time, until the communication is complete. The franchisee  
110 may submit a request to the franchisor for warranty labor  
111 rate increases a maximum of once per calendar year.

112           4. In no event shall compensation to a franchisee for  
113 labor times and labor rates under this section be less than  
114 the times and rates charged by such franchisee for like  
115 service to retail customers for non-warranty service and  
116 repairs. Additionally, the franchisor shall reimburse the  
117 franchisee for any parts provided in satisfaction of a  
118 warranty at the prevailing retail price charged by that  
119 franchisee for the same parts when sold to a retail customer.

120           5. There shall be no reduction in payments due to  
121 preestablished market norms or market averages. Franchisors  
122 are prohibited from establishing restrictions or limitations  
123 of customer repair frequency due to failure rate indexes or  
124 national failure averages.

125           6. All claims, either original or resubmitted, made by  
126 franchisees under this section shall be either approved or  
127 disapproved within thirty days following their submission.  
128 All approved claims shall be paid within ten days following  
129 their approval. A franchisee that submits a claim that is  
130 disapproved shall be notified in writing of the disapproval

131 within thirty days of the claim's submission, and each such  
132 notice shall state the specific grounds upon which the  
133 disapproval is based. The franchisee shall be permitted to  
134 correct and resubmit such disapproved claims within thirty  
135 days of receipt of disapproval. Any claims not specifically  
136 disapproved in writing within thirty days from their  
137 submission shall be deemed approved, and payment shall  
138 follow within ten days.

139 7. No debit reduction or charge-back of any item on a  
140 warranty repair order shall be made absent a finding of  
141 fraud or illegal actions by the franchisee.

142 8. Franchisors shall not impose any form of cost  
143 recovery fees or surcharges against a franchisee for  
144 payments made in accordance with this section.

145 9. A warranty claim timely made shall not be deemed  
146 invalid solely because unavailable parts cause additional  
147 use and mileage to the vehicle. If a manufacturer imposes a  
148 recall or stop sale on any new vehicle in a franchisee's  
149 inventory which prevents sale of the vehicle, the franchisor  
150 shall compensate the franchisee for any interest and storage  
151 until the vehicle is repaired and made ready for sale.

152 10. A franchisor shall not, by agreement, by  
153 restrictions on reimbursement, or otherwise, restrict the  
154 nature or extent of services to be rendered or parts to be  
155 provided so that such restriction prevents the franchisee  
156 from satisfying the warranty by rendering services in a good  
157 and workmanlike manner and providing parts that are required  
158 in accordance with generally accepted standards. Any such  
159 restriction shall constitute an unlawful practice.

160 11. The obligations imposed on franchisors under this  
161 section shall apply to any parent, subsidiary, affiliate, or  
162 agent of the franchisor, any entity under common ownership

163 or control, any employee of the franchisor, and any entity  
164 holding one percent or more of the shares of any class of  
165 securities or other ownership interest in the franchisor, if  
166 a warranty or service or repair plan is issued by that  
167 entity instead of or in addition to one issued by the  
168 franchisor.

169 [5.] 12. A franchisor shall compensate the franchisee  
170 for franchisor-sponsored sales or service promotion events,  
171 including but not limited to, rebates, programs, or  
172 activities in accordance with established written guidelines  
173 for such events, programs, or activities, which guidelines  
174 shall be provided to each franchisee.

175 [6.] 13. No franchisor shall require a franchisee to  
176 submit a claim authorized under subsection [5] 12 of this  
177 section sooner than thirty days after the franchisee becomes  
178 eligible to submit the claim. All claims made by a  
179 franchisee pursuant to subsection [5] 12 of this section for  
180 promotion events, including but not limited to rebates,  
181 programs, or activities shall be paid within ten days after  
182 their approval. All claims shall be either approved or  
183 disapproved by the franchisor within thirty days after their  
184 receipt on a proper form generally used by the franchisor  
185 and containing the usually required information therein.  
186 Any claim not specifically disapproved in writing within  
187 thirty days after the receipt of this form shall be  
188 considered to be approved and payment shall be made within  
189 ten days.

190 [7. In calculating the retail rate customarily charged  
191 by the franchisee for parts, service, and labor, the  
192 following work shall not be included in the calculation:

193 (1) Repairs for franchisor, manufacturer, or  
194 distributor special events, specials, or promotional  
195 discounts for retail customer repairs;

196 (2) Parts sold at wholesale;

197 (3) Engine assemblies and transmission assemblies;

198 (4) Routine maintenance not covered under any retail  
199 customer warranty, such as fluids, filters, and belts not  
200 provided in the course of repairs;

201 (5) Nuts, bolts, fasteners, and similar items that do  
202 not have an individual part number;

203 (6) Tires; and

204 (7) Vehicle reconditioning.

205 8. If a franchisor, manufacturer, importer, or  
206 distributor furnishes a part or component to a franchisee,  
207 at no cost, to use in performing repairs under a recall,  
208 campaign service action, or warranty repair, the franchisor  
209 shall compensate the franchisee for the part or component in  
210 the same manner as warranty parts compensation under this  
211 section by compensating the franchisee at the average markup  
212 on the cost for the part or component as listed in the price  
213 schedule of the franchisor, manufacturer, importer, or  
214 distributor, less the cost for the part or component.

215 9.] 14. A franchisor shall not require a franchisee to  
216 establish the retail rate customarily charged by the  
217 franchisee for parts, service, or labor by an unduly  
218 burdensome or time-consuming method or by requiring  
219 information that is unduly burdensome or time consuming to  
220 provide, including, but not limited to, part-by-part or  
221 transaction-by-transaction calculations. A franchisee shall  
222 not request a franchisor to approve a different labor rate  
223 or parts rate more than [twice] **once** in one calendar year.

224 [10. If a franchisee submits any claim under this  
225 section to a franchisor that is incomplete, inaccurate, or  
226 lacking any information usually required by the franchisor,  
227 then the franchisor shall promptly notify the franchisee,  
228 and the time limit to submit the claim shall be extended for  
229 a reasonable length of time, not less than five business  
230 days following notice by the franchisor to the franchisee,  
231 for the franchisee to provide the complete, accurate, or  
232 lacking information to the franchisor.

233 [11.] 15. (1) A franchisor may only audit warranty,  
234 sales, or incentive claims and charge-back to the franchisee  
235 unsubstantiated claims for a period of twelve months  
236 following payment, subject to all of the provisions of this  
237 section. Furthermore, if the franchisor has good cause to  
238 believe that a franchisee has submitted fraudulent claims,  
239 then the franchisor may only audit suspected fraudulent  
240 warranty, sales, or incentive claims and charge-back to the  
241 franchisee fraudulent claims for a period of two years  
242 following payment, subject to all provisions of this section.

243 (2) A franchisor shall not require documentation for  
244 warranty, sales, or incentive claims more than twelve months  
245 after the claim was paid.

246 (3) Prior to requiring any charge-back, reimbursement,  
247 or credit against a future transaction arising out of an  
248 audit, the franchisor shall submit written notice to the  
249 franchisee along with a copy of its audit and the detailed  
250 reason for each intended charge-back, reimbursement, or  
251 credit. A franchisee may file a complaint with the  
252 administrative hearing commission within thirty days after  
253 receipt of any such written notice challenging such action.  
254 If a complaint is filed within the thirty days, then the  
255 charge-back, reimbursement, or credit shall be stayed

256 pending a hearing and determination of the matter under  
257 section 407.822. If the administrative hearing commission  
258 determines that any portion of the charge-back,  
259 reimbursement, or credit is improper, then that portion of  
260 the charge-back, reimbursement, or credit shall be void and  
261 not allowed.

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